



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 2, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2106

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119080.

The Houston Police Department (the "department") received a request for information relating to the types of weapons carried by six department officers who were involved in the July 12, 1998 shooting death of Pedro Oregon. You contend that the requested information is made confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code and excepted from public disclosure by section 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action, as contemplated by chapter 143, must be released to the public unless the information comes within one of the Open Records Act's exceptions to required public disclosure. You inform us, however, that the information at issue here is contained in the records of an internal affairs investigation that has not resulted in disciplinary action. See Gov't Code § 143.089(a)(2). You therefore contend that the requested information is made confidential

under section 143.089(g) of the Local Government Code and thus may not be released to the requestor.

You inform us that the Homicide and Internal Affairs Divisions are investigating the shooting concurrently. While we generally agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), the information at issue is contained in department offense report and investigation records separate and apart from those of the internal affairs investigation. The department may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation.

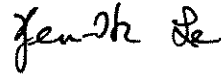
Next, we will consider your assertion that section 552.108 excepts the requested information from public disclosure. Section 552.108, the "law enforcement exception," provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from public disclosure if release of the information would interfere with the detection, investigation or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to an ongoing investigation and possible prosecution. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, except for basic information, the remaining requested information is excepted from disclosure under section 552.108(a)(1). Although section 552.108(a)(1) authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 119080

Enclosures: Submitted documents

cc: Mr. Vicente Arenas
KTRK Television
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(w/o enclosures)